

(Enter the name of the subdivision or PUD in bold CAPS)
MEMORANDUM OF AGREEMENT FOR PUBLIC IMPROVEMENTS

THIS AGREEMENT is made and entered this ____ day of _____, 20__, by and between the TOWN of Frederick, a Colorado municipal corporation, whose address is P.O. Box 435, Frederick, Colorado ("TOWN"), and (enter the name of developer), a Colorado (enter the type of corporation), whose address is (enter the full address of developer) ("DEVELOPER").

WHEREAS, DEVELOPER has submitted a Final Plat for the (enter the name of the subdivision or PUD) ("SUBDIVISION" or "DEVELOPMENT"), attached as "Exhibit A" and incorporated herein by reference, which the Planning Commission and TOWN Board of Trustees have reviewed and approved; and

WHEREAS, additional filings are anticipated, and this agreement applies only to Filing; and

WHEREAS, the subdivision regulations of the TOWN requires that the DEVELOPER enter into a Subdivision Agreement hereafter called a Memorandum of Agreement for Public Improvements ("AGREEMENT" or "MOAPI") with the TOWN concerning public improvements related to the Development detailed and attached as the "Schedule of Improvements, Exhibit B," hereinafter called "Exhibit B" and incorporated herein by reference; and

WHEREAS, the parties have modified this standard AGREEMENT as indicated by the addition of certain special provisions, if any, in Exhibit F; and

WHEREAS, the TOWN and the DEVELOPER agree that such public improvements are directly related to and generated by development intended to occur within the SUBDIVISION and that no taking thereby will occur requiring any compensation.

NOW, THEREFORE, in consideration of the foregoing, the parties hereto promise, covenant and agree as follows:

1. GENERAL CONDITIONS.

1.1 Definitions:

- a.) **Accept:** The Town accepts public improvements after they have been constructed and inspected. Conditional Acceptance and Final Acceptance are the times when the warranty period begins and when the warranty period ends. Conditional and Final Acceptance by the Town must be in writing to be valid, as described in Sections 1.4, 1.6, and 1.8.

and accepted in writing by the TOWN or by the utility providing the service, and with the approved plat, and in full conformity with the TOWN's construction specifications applicable at the time of construction plan acceptance. Such acceptance shall continue in effect for one (1) year from the date of acceptance. If the DEVELOPER commences or performs any construction after such one (1) year period, the DEVELOPER shall resubmit the project construction plans to the TOWN for reexamination. The TOWN may require the DEVELOPER to comply with the TOWN standards and specifications that are in effect at the time of resubmittal.

1.5 Development Coordination. Unless specifically provided in this AGREEMENT to the contrary, all submittals to the TOWN shall be made to the TOWN Clerk with a copy to the TOWN Engineer, as may be designated by the TOWN. The TOWN Engineer, or the Engineer's designee shall render those acceptances required of the TOWN in connection with this AGREEMENT, except those requiring formal action by the Board of Trustees in the form of a resolution or ordinance, and shall have general responsibility for coordinating development with DEVELOPER.

1.6 Plan Submission and Acceptance.

- (a) DEVELOPER shall furnish the TOWN complete plans for public improvements for the Development, and obtain written acceptance of such plans by the TOWN before the commencement of any construction work thereon. DEVELOPER shall submit all sanitary sewer plans to and shall acquire the written acceptance by the St. Vrain Sanitation District before the commencement of any construction work on such improvements. Acceptance shall be indicated by the signature of the appropriate district representative on each drawing in the plans set containing sanitary sewer and storm drainage facilities. *DEVELOPER shall submit all potable water construction plans to and shall acquire the written acceptance by the Left Hand Water District before the commencement of any construction work on such improvements. Approval shall be indicated by the signature of the authorized representative for the Left Hand Water District on each drawing in the plans set containing potable water distribution lines.*
- (b) The TOWN shall issue its written acceptance or disapproval of public improvement plans as expeditiously as reasonably possible. Said acceptance or disapproval shall be based upon the standards and specifications for public improvements as established by the TOWN, and the TOWN shall notify DEVELOPER of all deficiencies that must be corrected before plan acceptance. All deficiencies shall be corrected and

DEVELOPER shall resubmit the plans for review and acceptance by the TOWN before the construction of any improvements.

(c) DEVELOPER shall submit all plans for public improvements as paper documents and by acceptable electronic transfer, AutoCAD™ drawing files (release 14, or newer). All written documents shall be submitted as paper documents and by acceptable electronic transfer, as word processing files, Microsoft Word, latest version, or compatible.

(d) Amendments to the approved plans shall be submitted to the TOWN for review and approval in the same manner as for the original plans. Approval of amendments shall be in writing.

(e) The DEVELOPER shall cause to be furnished to the Town Engineer a construction schedule for the proposed public improvements and obtain his written approval for such schedule at least five (5) days prior to the commencement of construction work. The construction schedule shall be updated each month until conditional acceptance of the construction is given. The construction schedule shall be provided to the Town Engineer electronically, in Microsoft Project Manager, or a similar program.

1.7 Incorporation by Reference.

All plans, special provisions, proposals, specifications and contracts for the public improvements furnished and let pursuant to this AGREEMENT shall be and hereby are made a part of this AGREEMENT by reference as fully as if set out herein in full.

1.8 Conditional Acceptance of Constructed Public Improvements.

(a) No later than fourteen (14) days after public improvements are completed for each phase or for the entirety of the Development, DEVELOPER shall request inspection by the TOWN. If DEVELOPER does not request this inspection within fourteen (14) days of completion of improvements, the TOWN may conduct the inspection without the approval of DEVELOPER.

(b) If improvements completed by DEVELOPER are in substantial compliance with the approved public improvement plans, the TOWN shall grant "conditional acceptance," which shall be subject to "final acceptance" as set forth herein. Through its Engineering Department, the

TOWN shall issue to the DEVELOPER a letter acknowledging said conditional acceptance.

- (c) If improvements completed by DEVELOPER are not in substantial compliance with the approved public improvement plans, the TOWN shall provide written notice to DEVELOPER of the repairs, replacements, construction or other work required to receive "conditional acceptance." DEVELOPER shall complete all needed repairs, replacements, construction or other work within thirty (30) days of said notice, weather permitting. After DEVELOPER completes the repairs, replacements, construction, or other work required, DEVELOPER shall request of the TOWN a reinspection of such work to decide if TOWN can grant "conditional acceptance." The TOWN reserves the right to schedule reinspections, depending upon scope of deficiencies. The TOWN shall provide written notice to DEVELOPER as to whether or not the work is acceptable before the TOWN acts to complete any such work at DEVELOPER's expense as provided in (d) below.
- (d) If DEVELOPER has not completed the improvements on or before the completion dates set forth in "Exhibit B" herein, or if DEVELOPER does not complete the repairs, replacements, construction or other work required within thirty (30) of said notice, the TOWN may exercise its rights to secure performance as provided in Section 14.1 of this AGREEMENT.
- (e) DEVELOPER shall provide a certified statement of construction costs no later than forty-five (45) days after improvements are completed.
- (f) The DEVELOPER shall provide the Town Engineer certified Record Plan Transparencies on Black Image Diazo Reverse Mylars (as-built) plans and other required drawings upon completion of the construction of public improvements, and other documents as required by the TOWN no later than forty-five (45) days after improvements are completed. These documents shall show "as-built" locations and design details of such improvements. In addition, "as-built" plans and other required drawings for public improvements shall be submitted by acceptable electronic transfer, AutoCAD™ drawing files (release 14, or later). Failure to provide the required as-built drawings may result in the suspension of development activities by the TOWN including, but not limited to, the issuance of building permits and certificates of occupancy.
- (g) The TOWN shall issue no building permit for the construction of any structure until all the water lines, fire hydrants, sanitary sewer lines (if

required), storm sewer facilities (including storm sewers, catch basins and stormwater detention ponds) and streets (including the curb, gutter and sidewalk, and the street with at least the asphalt base course completed) serving such structure have been completed and granted conditional acceptance.

- (h) The above requirements also apply to sewer and water improvements to be inspected and accepted by the appropriate Special District. The DEVELOPER shall obtain conditional acceptance of the improvements in writing and provide a copy of the same to the TOWN.

1.9 Maintenance and Warranty of Improvements. For a two (2) year period from the date of conditional acceptance of any improvements related to the Development, DEVELOPER shall warrant said improvements and, at its own expense, take all actions necessary to maintain said improvements and make all needed repairs or replacements that, in the reasonable opinion of the TOWN, shall become necessary. If within thirty (30) days after DEVELOPER's receipt of written notice from the TOWN requesting replacement or repairs to the public improvements, the DEVELOPER has not completed such repairs, the TOWN may exercise its rights to secure performance as provided in Section 14.1 of this AGREEMENT.

1.10 Final Acceptance.

- (a) At least thirty (30) days before two (2) years have elapsed from the issuance of conditional acceptance, or as soon thereafter as weather permits, DEVELOPER shall request a "final acceptance" inspection. The TOWN shall inspect the improvements and shall notify the DEVELOPER in writing of all deficiencies and necessary repairs, if any.
- (b) If there are no deficiencies, and after clear title to on-site and off-site right-of-ways and easements have been transferred to the Town by plat dedication or general or special Warranty Deed, and after all licenses and permits necessary for the development of the SUBDIVISION and obtained by the DEVELOPER have been transferred to the TOWN, the TOWN shall accept streets, right-of-ways and other public ways, easements, open spaces, parks and other lands dedicated on the plat and accept public improvements constructed by the DEVELOPER for ownership and maintenance by the TOWN and through the Engineering Department shall issue to the DEVELOPER a letter acknowledging said final acceptance.
- (c) If there are deficiencies of the public improvements, the TOWN shall provide a written notice identifying the deficiencies and DEVELOPER

all testing of materials or construction that the TOWN may reasonably require, including but not limited to compaction testing for embankment fills, structural backfills, pipe bedding, trench backfills, subgrade, road base course and asphalt, and concrete strength testing, and shall furnish copies of test results to the TOWN on a timely basis for TOWN review and acceptance before commencement or continuation of construction to which the testing is applicable. DEVELOPER shall repair or remove all materials and work not conforming to such regulations, plans and specifications and replace the same at DEVELOPER's expense to conform to such regulations, plans and specifications.

(b) At all times during construction of the public improvements the TOWN and/or representatives of the affected Special Districts shall have access to inspect the materials and workmanship of said construction, determine the progress of the work, and determine compliance of the work with the accepted plans and the TOWN's and Districts' construction regulations. The TOWN Engineer or District's Engineer shall be present to inspect the pressure leakage testing of potable water lines conducted by the DEVELOPER. The Town may collect and deliver a water sample to Weld County Health Department for bacteriological tests of the potable water lines after the DEVELOPER has disinfected said lines according to the TOWN's or District's construction regulations, or the Town may require that the DEVELOPER shall employ, at the DEVELOPER's expense, a testing laboratory acceptable to the TOWN or District to conduct said bacteriological tests.

(c) All work shown on the accepted public improvement plans shall be subject to inspection by the TOWN Engineer. Inspection by the TOWN Engineer shall not relieve the DEVELOPER from compliance with the accepted plans and specifications or the TOWN's construction regulations. Inspection services requiring the presence of the TOWN Engineer are provided Monday through Friday, except legal holidays, from 9:00 a.m. to 4:00 p.m. During the hours listed above, inspections shall be scheduled a minimum of seventy-two (72) hours in advance with the TOWN Engineer. Requests for inspection services beyond the hours listed above, shall be submitted a minimum of seventy-two (72) hours in advance to the TOWN Engineer for approval. All requests for after-hours inspection services shall be made in writing to the TOWN Engineer. If TOWN approves the request, the DEVELOPER shall reimburse the TOWN for all direct costs of the after-hours inspection services. If TOWN denies the request, the work shall not continue after the time requested until an inspection has been done during the hours listed above. The DEVELOPER shall comply

with all notification and inspection requirements of the St. Vrain Sanitation District regarding sanitary sewer improvements.

- (d) The Developer shall pay the Town for all costs incurred by the Town in the performance of the above said services within ten (10) days of the Town submitting an invoice for said services. Failure by the Developer to pay within the specified time shall be cause for the Town to deny future building permits and/or order cessation of all activities on the DEVELOPMENT.

1.12 Financing and Improvement Guarantees.

- (a) Except as otherwise specifically agreed herein, the DEVELOPER agrees to install and pay for all improvements described in "Exhibit B" or otherwise required by this MOAPI as shown on the accepted plat, landscape plans, utility plans, construction drawings, and other accepted documents on file with the TOWN.
- (b) DEVELOPER shall submit to the TOWN an Improvement Guarantee for all public improvements related to the Development. The term of the guarantee shall be for a time sufficient to cover the completion of construction of the public improvements and the warranty period through final acceptance; in no case shall the term of the guarantee be for fewer than two years. The guarantee may be in cash, certified check, or a letter of credit in form and substance as shown on "Exhibit C" attached hereto and incorporated herein by reference. The guarantee shall be subject to approval by the Town Attorney. The guarantee, if a letter of credit, shall not expire during the winter season (November 1 - April 30). The Improvement Guarantee shall include, but not be limited to, all water system improvements, sanitary sewer collection lines, sanitary sewer lift stations, storm sewer lines and catch basins, storm drainage swales, storm drainage detention ponds and other improvements, streets, curbs, gutter, sidewalks, landscaping, pedestrian and non-motorized paths and trails, street median, boulevard and subdivision entryway landscaping, street lighting park improvements, irrigation systems, gas services, electric services, telephone services, cable television services and any other improvements constructed in relation to the development of the (Insert the name of the subdivision or PUD) as described by Exhibit B or by Exhibit F.
- (c) The total amount of the guarantee shall be calculated as one hundred percent (100 %) of the total estimated cost, including labor and materials,

of all public improvements to be constructed as described on "Exhibit B," except those public utilities to be owned by an entity other than the TOWN and for which a separate surety is provided. TOWN shall not release the Improvement Guarantee until the TOWN has granted final acceptance of the improvements. Partial releases of an Improvement Guarantee may be considered when development is phased and a phase has received conditional acceptance. Irrespective of partial releases, at all times during the warranty period on secured improvements, the TOWN shall retain at least ten percent (10%) of the total improvement costs as an Improvement Guarantee under this section. The costs established in "Exhibit B" shall be reviewed and approved by the Town Engineer; however, partial release of the Improvement Guarantee, as set forth herein, shall not require amendment to the costs set forth in "Exhibit B".

- (d) If DEVELOPER has not submitted or fails to maintain the Improvement Guarantee, then DEVELOPER is in default of this AGREEMENT and is subject to the provisions of Section 14.1 of this AGREEMENT, and the suspension of development activities by the TOWN including, but not limited to, the issuance of building permits and certificates of occupancy.
- (e) The estimated cost of completion of the public improvements to be constructed as described on "Exhibit B" may increase in the future. Accordingly, the TOWN reserves the right to review and adjust the cost estimates at any time in the future, or to require the DEVELOPER to provide an updated estimate of costs, before or after DEVELOPER provides the Improvement Guarantee. TOWN will make adjusted cost estimates according to changes in the Construction Cost Index as published by the *Engineering News Record*. If the TOWN adjusts cost estimates for the Improvements, the TOWN shall give written notice to the DEVELOPER. The DEVELOPER shall, within thirty days after receipt of said written notice, give the TOWN a new or amended Improvement Guarantee in the amount of the adjusted cost estimates. If the DEVELOPER refuses or fails to so give the TOWN a new or amended Improvement Guarantee, the TOWN may draw on the Improvement Guarantee and either hold such funds as security for performance of this AGREEMENT, or spend such funds to finish improvements or correct deficiencies in the public improvements, or it may withhold building permits and certificates of occupancy within the Development, as the TOWN deems appropriate.
- (f) If an Improvement Guarantee is to expire within thirty (30) calendar days and the DEVELOPER has not yet provided a satisfactory replacement, the TOWN may draw on the Improvement Guarantee and either hold such

funds as security for performance of this AGREEMENT, or spend such funds to construct or finish improvements, or correct deficiencies in the public improvements, as the TOWN deems appropriate.

(g) If the Improvement Guarantee expires or the entity issuing the Improvement Guarantee becomes non-qualifying, then the TOWN shall furnish written notice to the DEVELOPER of the condition, and within thirty (30) days of receipt of such notice the DEVELOPER shall give the TOWN a substituted qualifying Improvement Guarantee, or augment the deficient security as necessary to bring the security into compliance with the requirements of this Section 1.10. If the DEVELOPER refuses or fails to give the TOWN a substitute qualifying Improvement Guarantee, or augment the deficient security, the TOWN may draw on the Improvement Guarantee and either hold such funds as security for performance of this AGREEMENT, or spend such funds to construct or finish improvements, or correct deficiencies in the public improvements, and it may withhold building permits and certificates of occupancy within the Development, as the TOWN deems appropriate.

(h) If the DEVELOPER fails or refuses to construct the improvements listed on "Exhibit B," or fails or refuses to finish the construction of the improvements listed on "Exhibit B," the TOWN may draw on the Improvement Guarantee and either hold such funds as security for performance of this AGREEMENT or spend such funds to construct or finish the improvements, or correct deficiencies in the public improvements, as the TOWN deems appropriate.

1.13 Insurance. DEVELOPER shall guarantee, and upon written request by the TOWN, furnish proof to the TOWN that all employees and contractors engaged in the construction of improvements are covered by adequate Workers' Compensation Insurance and Public Liability Insurance through contract requirements and other normal means.

1.14 OSHA Compliance. DEVELOPER shall require, and upon written request by the TOWN furnish proof to the TOWN, all contractors engaged in the construction of PUBLIC IMPROVEMENTS to faithfully comply with all provisions of the Federal Occupational Safety and Health Act (OSHA).

1.15 Development Impact Fees. The TOWN has established certain uniform development impact fees that directly address the effect of development intended to occur within the PROPERTY upon the TOWN' infrastructure, administration and delivery of governmental services. The DEVELOPER agrees to the payment of these uniform development impact fees as established by the TOWN. The

TOWN and the DEVELOPER further agree that the TOWN may amend the development impact fees from time to time as needed to address changing affects upon the TOWN's infrastructure, administration and deliver of governmental services as a result of development occurring within the TOWN. The development impact fees are to be paid at the then current rate upon subdivision of the property and/or the issuance of building permits whichever is applicable for that particular development impact fee.

2. **CONSTRUCTION OF IMPROVEMENTS.**

2.1 Improvements to be Constructed. In accordance with the policies and ordinances of the TOWN, the DEVELOPER shall construct all improvements specified in Exhibit B and will comply with all additional provisions specified in Exhibit F. If there is a discrepancy between the improvements shown on any approved plans or drawings and as listed in Exhibit B, then the larger quantity or more expensive improvement shall be required.

2.2 On-site and Off-site Rights-of-way, Easements, Licenses and Permits. For full development of the PROPERTY to occur, the DEVELOPER may need to acquire certain off-site and on-site rights-of-way, easements, licenses and permits for the construction of off-site and on-site improvements, as identified in "Exhibit B" and the approved development plans and convey the same to the TOWN. All acquisition costs of off-site and on-site right-of-way, easements, licenses and permits necessary to serve the PROPERTY shall be the DEVELOPER's sole responsibility, subject to reimbursement as detailed in this MOAPI.

- (a) All such conveyances shall be free and clear of liens, taxes and encumbrances and shall be by plat dedication or by general or special Warranty Deed in form and substance acceptable to the TOWN Attorney. The TOWN at the DEVELOPER's expense shall record all title documents. The DEVELOPER shall also furnish, at its own expense, an ALTA title policy for all interest(s) so conveyed, subject to approval by the TOWN Attorney.
- (b) If the DEVELOPER cannot acquire an off-site or on-site easement or rights-of-way necessary to develop the PROPERTY, the DEVELOPER may request the TOWN's assistance in getting the easements or rights-of-way. Such assistance by the TOWN shall be in compliance with Colorado law authorizing the TOWN's use of eminent domain. The DEVELOPER shall advance to the TOWN all acquisition costs, including any court costs and attorneys' fees, the TOWN may incur in providing assistance.

- (c) The TOWN and the DEVELOPER agree that the acquisition of off-site and on-site rights-of-way, easements, licenses and permit necessary to serve the transportation needs of the PROPERTY are directly related to and generated by development intended to occur within the PROPERTY and that no taking thereby will occur requiring any compensation.

2.3 Construction.

- (a) DEVELOPER shall furnish and install, at its own expense, the improvements listed on "Exhibit B," in conformance with the subdivision plat and final development plan, and with the construction plans, specifications and drawings approved by the TOWN. The Developer will cause his contractors to furnish the Town Engineer with a project schedule of proposed operations at least five (5) days prior to their commencement of construction work. Construction of public improvements shall be completed within a reasonable time, not to exceed two calendar years from the date of commencement.
- (b) If DEVELOPER does not meet the above obligations, then DEVELOPER shall be in default of the AGREEMENT, and the TOWN may exercise its rights under Section 14.1 of this AGREEMENT including the suspension of development activities by the TOWN including, but not limited to, withholding the issuance of building permits and certificates of occupancy.

2.4 Utility Coordination and Installation. In addition to the improvements described on "Exhibit B," that are the DEVELOPER's responsibility to construct, install and develop, DEVELOPER shall also be responsible for coordination of and payment for installation of on-site and off-site electric, street lights, natural gas, telephone, cable television and other utilities required to serve the Development. All utilities within the Development shall be placed underground to the extent required by the *Frederick Municipal Code*.

2.5 Utility Relocation. DEVELOPER shall pay the full cost of relocating existing utilities that the development of the SUBDIVISION may require. DEVELOPER shall relocate all existing overhead utilities within the SUBDIVISION or in road right-of-ways adjacent to the SUBDIVISION, including but not limited to electric or telecommunications lines and cables, underground. Facilities designed for the transmission or distribution of electric energy at voltages greater than 15,000 volts shall be exempt from this requirement.

2.6 Trash, Debris, Mud, Wind and Water Erosion.

(a) **Erosion and Sediment Control Plan.** DEVELOPER shall provide a wind and stormwater erosion and sediment control plan for review and acceptance by the TOWN. The plan shall address the existing and potential erosion and sediment problems to be created by the proposed development. Conservation measures used to mitigate these concerns shall be in accordance with standards and specifications in effect at the time of construction and may include by way of illustration, restrictions on the acreage of land stripped of vegetation, temporary seeding with grass cover, the use of geo-textile and erosion control mats, sprinkling of exposed ground, berms and sedimentation fences, chiseling exposed ground, etc. If applicable, DEVELOPER shall consult the Soil Conservation District regarding erosion and sediment control.

(b) DEVELOPER agrees that during construction of the development and improvements described herein, DEVELOPER shall take any and all steps necessary to control trash, debris and wind or water erosion in the development. If the TOWN determines that said trash, debris or wind or water erosion causes damage or injury or creates a nuisance, DEVELOPER agrees to abate said nuisance and/or to correct any damage or injury within five (5) working days after notification by TOWN. If DEVELOPER does not abate said nuisance or if an emergency exists, to be determined by the TOWN in its sole discretion, the TOWN may abate the nuisance and/or correct any damage or injury without notice to DEVELOPER at DEVELOPER's expense.

(c) DEVELOPER agrees to take any and all steps necessary to prevent the transfer of mud or debris from the construction site onto public rights-of-way and to immediately remove such mud and debris from public rights-of-way after notification by the TOWN. If DEVELOPER does not abate such mud or debris, or if an emergency exists, TOWN may abate the same at DEVELOPER's expense.

2.7 State Stormwater Discharge Permit Required. DEVELOPER shall obtain, if required by state or local statutes or policies, a CDPS "General Permit for Stormwater Discharges Associated with Construction Activity" required during construction.

2.8 Operation of Construction Equipment.

(a) DEVELOPER shall prohibit the operation of construction equipment outside an enclosed structure between the hours of 8:00 p.m. and the hour of 7:00 a.m. on weekdays, or the hour of 8:00 a.m. on legal holidays and

weekends. The Town Engineer may, upon written application, alter the hours of operation for good cause.

- (b) The operation of construction equipment for grading or constructing either surface improvements or underground utilities, either public or private, shall be prohibited between the hours of 8:00 p.m. and 7:00 a.m. on weekdays and 4:00 p.m. and 8:00 a.m. on legal holidays and weekends. Upon written request, the Town Engineer may alter the hours of operations.

3. **PUBLIC USE LAND DEDICATION.** Before the issuance of any building permits, DEVELOPER shall convey to the TOWN those certain lands as described or depicted on the subdivision plat as dedicated to public uses. Said conveyance shall be by General or Special Warranty Deed in form and substance satisfactory to the Town Attorney. The DEVELOPER shall, at DEVELOPER's expense, furnish a commitment for title insurance on the property at the time of conveyance. The property shall be free and clear of liens, taxes and encumbrances, except for ad valorem real property taxes for the calendar year of conveyance and thereafter, but subject to all easements, right-of-way, reservations, restrictions, or other title burdens of record, or those easements and right-of-ways that would be readily apparent from a physical inspection. The TOWN shall record all title documents at the DEVELOPER's expense.

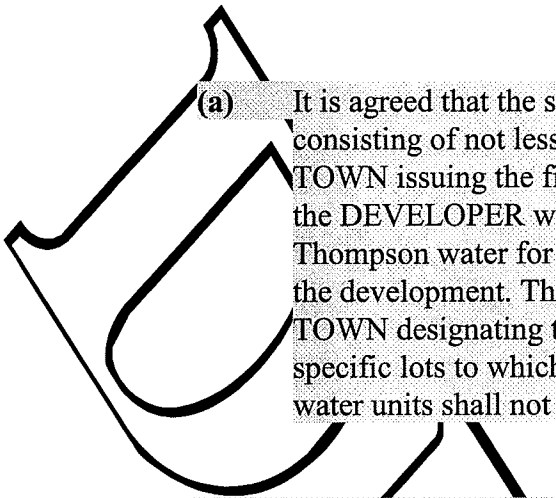
4. **WATER RIGHTS.**

4.1 **Water Rights.**

- (a) If not transferred to the TOWN at the time of annexation, the DEVELOPER will transfer to the TOWN 1.2 units of Colorado Big Thompson water for each residential lot, or for each Single Family Equivalency (SFE) to be constructed within the subdivision before the TOWN records the final Subdivision Plat.
- (b) The TOWN may require the dedication of irrigation water rights that are to be used in the irrigation of park and open space. The DEVELOPER shall by Special Warranty Deed acceptable to the TOWN convey to the TOWN all non-tributary and not non-tributary groundwater as defined by C.R.S. § 37-90-103, whether adjudicated, unadjudicated, permitted or unpermitted, underlying the property.

Alternative Language if all water rights will not be required up front. Use to replace all of the above (reformat for numbering consistency)

4.1 **Water Rights.**

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- (a) It is agreed that the subdivision will be developed in multiple phases consisting of not less than forty (40) lots in each phase. Prior to the TOWN issuing the first building permit in each phase of the subdivision, the DEVELOPER will transfer to the TOWN 1.2 units of Colorado Big Thompson water for each residential lot to be constructed in that phase of the development. The DEVELOPER will deliver written notice to the TOWN designating the applicable lots in each phase and designating the specific lots to which the dedicated water shall apply. Credit for CBT water units shall not be transferred between phases.

Alternative Language if water rights will not be required up front. Use to replace all of the above (reformat for numbering consistency)

4.1 Water Rights.

- (a) In lieu of the dedication of water rights by the DEVELOPER, the TOWN will assess at the time of issuance of a building permit for each residential lot, a fee to acquire the water rights needed to serve the residential unit. The water rights fee per residential unit is established by resolution adopted by the Board of Trustees and is sufficient in amount to cover all costs associated with serving the residential unit with water. The fee will include, but not be limited to, the current market price per unit of Colorado Big Thompson (CBT) water, transfer fees, interest and legal fees.
- (b) The Board of Trustees, at their sole discretion and after giving due and proper notice, may require the DEVELOPER and/or owner of any lot in the DEVELOPMENT to provide the required water rights to serve the residential units before building permits will be issued.
- (c) The TOWN may require the dedication of irrigation water rights that are to be used in the irrigation of park and open space. The DEVELOPER shall by Special Warranty Deed acceptable to the TOWN convey to the TOWN all non-tributary and not non-tributary groundwater as defined by C.R.S. § 37-90-103, whether adjudicated, unadjudicated, permitted or unpermitted, underlying the property.

Alternative Language if another entity will provide water service to the development. Use to replace all of the above. (reformat for numbering consistency)

4.1 Water Rights.

oversizing of lines and pumping and storage facilities for future development of adjacent property.

(b) DEVELOPER shall install at his sole cost and expense, all the water lines, fire hydrants and appurtenances within the SUBDIVISION. Water lines lying within the dedicated right-of-way and utility easements shall be dedicated to the TOWN after construction.

(c) Any reimbursements to the DEVELOPER for oversizing of water lines and other water facilities will be as specified by the TOWN.

Alternative Language if another entity will provide water service to the development. Use to replace all of the above. (reformat for numbering consistency)

5.2 Extension of Water Services.

(a) DEVELOPER shall install at his sole cost and expense, all the water mains, trunk lines, pumping and storage facilities and appurtenances necessary to provide service from the Left Hand Water District's system to the SUBDIVISION pursuant to District and TOWN accepted plans, specifications, and as described in "Exhibit B." These extensions may include the oversizing of lines and pumping and storage facilities for future development of adjacent property.

(b) DEVELOPER shall install at his sole cost and expense, all the water lines, fire hydrants and appurtenances within the SUBDIVISION. Water lines lying within the dedicated right-of-way and utility easements shall be dedicated to the District after construction.

(c) Any reimbursements to the DEVELOPER for oversizing of water lines and other water facilities will be as specified by the District.

5.3 Water Connection and Plant Investment Fees.

(a) Water connection and plant investment fees shall be the existing TOWN water connection and plant investment fees at the time that the DEVELOPER requests water service. Water connection and plant investment fees shall be paid when a building permit for a structure is requested from the TOWN. CBT water shares are acceptable in lieu of cash payment for the CBT water share portion of the water tap fee for each water tap.

- (b) If the SUBDIVISION is not already in the Northern Colorado Water Conservancy District, the DEVELOPER agrees to petition for inclusion in said District and to the payment of any fees and taxes levied by the District as a condition of said inclusion.

Alternative Language if Town will not serve Water. Use to replace all of the above. (reformat for numbering consistency)

5.3 Water Connection and Plant Investment Fees.

- (a) Water tap and plant investment fees shall be the existing Left Hand Water District water tap and plant investment fees at the time that the DEVELOPER requests water taps.
- (b) If the SUBDIVISION is not already in the Northern Colorado Water Conservancy District, the DEVELOPER agrees to petition for inclusion in said District and to the payment of any fees and taxes levied by the District as a condition of said inclusion.
- (c) The TOWN shall require proof of purchase of a water tap for the building site before a building permit will be issued for the site.

6. SANITARY SEWER SERVICES

6.1 Provision of Sanitary Sewer Service.

- (a) TOWN provides sewer service by an intergovernmental agreement with the St. Vrain Sanitation District. The DEVELOPER shall comply at the time of development with the District's requirements.
- (b) If the SUBDIVISION is not already in the St. Vrain Sanitation District the DEVELOPER agrees to petition for inclusion in said District and to the payment of any fees and taxes levied by the District as a condition of said inclusion.
- (c) The TOWN shall require proof of purchase of a sewer tap for a building site before the TOWN will issue a building permit for the site.

6.2 Extension of Sanitary Sewer Services.

- (a) DEVELOPER shall install at his sole cost and expense, all the sewer mains, trunk lines, pumping facilities and appurtenances necessary to provide service from the District's system to the SUBDIVISION pursuant

to District accepted plans, specifications, and as described in "Exhibit B." These extensions may include the oversizing of lines and pumping facilities for future development of adjacent property.

(b) DEVELOPER shall install at his sole cost and expense, all the sewer lines and appurtenances within the SUBDIVISION. Sewer lines lying within the dedicated right-of-way and non-exclusive utility easements shall be dedicated to District after construction.

(c) Any reimbursements to the DEVELOPER for oversizing of sewer lines and other sewer facilities will be as specified by the District.

6.3 Sanitary Sewer Service Availability. TOWN does not warrant the availability of sanitary sewer service to the DEVELOPER for any phase of development. A determination of sanitary sewer service availability by the District shall be made by a system analysis at the time the DEVELOPER requests sanitary sewer taps.

6.4 Sanitary Sewer Tap and Plant Investment Fees.

(a) Sanitary sewer tap and plant investment fees shall be the existing District sanitary sewer tap and plant investment fees at the time that the DEVELOPER requests sewer taps.

(b) The TOWN shall require proof of payment of the sewer tap and plant investment fees for a building site before the TOWN will issue a building permit for the site.

Alternative Language if sanitary sewer is not available or will not be provided to the property. Use to replace the paragraphs above. (reformat for numbering consistency)

6.1 Individual Sewage Disposal System (ISDS).

(a) The DEVELOPER and the TOWN recognize that sanitary sewer service for the SUBDIVISION is not currently available. Therefore, an Individual Sewage Disposal System (ISDS) serving the SUBDIVISION may be used temporarily in the place of a centralized sewage collection and treatment system. The installation of an ISDS shall be subject to a separate agreement between the lot owner and the TOWN specifying the conditions under which the lot owner is permitted to install and maintain an ISDS. The ISDS shall also be subject to the permitting, inspection and approval by the Weld County Health Department.

(b) United Power shall install at the DEVELOPER's sole cost and expense, all the electric distribution system and appurtenances within the SUBDIVISION.

(c) The DEVELOPER shall advance a refundable construction deposit to the TOWN equal to the estimated total cost of the line extension and subdivision distribution system construction. Upon completion of the construction of the line extension and distribution system, the construction deposit shall be compared to the actual cost of said construction. If the actual cost of said construction is less than the construction deposit originally estimated, the TOWN shall thereupon refund the difference to the DEVELOPER. If the actual cost of said construction is greater than the construction deposit originally estimated, the DEVELOPER shall reimburse the TOWN the difference.

(d) Any reimbursements to the DEVELOPER for oversizing of main feeder lines and other electric facilities will be as specified in this MOAPI.

7.4 Electric Service Connection, Electric Capital Improvement and Main Feeder Capital Investment Fees. Electric service connection, electric capital improvement and main feeder capital investment fees shall be the existing TOWN electric service connection, electric capital improvement and main feeder capital investment fees at the time that the DEVELOPER requests electric service. Electric service connection and electric capital improvement fees shall be paid to the TOWN when a building permit for a structure is requested from the TOWN. Main feeder capital investment fees shall be paid as part of the construction deposit required for line extension, subdivision distribution and service connection construction by the TOWN.

8. DRAINAGE IMPROVEMENTS

8.1 Provision of Storm Water Drainage. It is agreed by the parties that the SUBDIVISION will participate in the storm water drainage system provided by the TOWN. The DEVELOPER shall comply at the time of development with the Town's requirements.

(a) DEVELOPER shall construct drainage improvements for the development in accordance with the master drainage plan PROPERTY prepared by the DEVELOPER and reviewed and accepted by the TOWN and the responsible drainage district, if any. These improvements may consist of on-site and off-site improvements, including but not limited to, storm water lines, drainage swales, pumping, storage facilities and storm water

treatment facilities. The improvements may include the oversizing of facilities to accommodate future development of adjacent property or to accommodate pass-through of historical flows from adjacent property.

- (b) DEVELOPER shall install at his sole cost and expense, all the storm water lines, drainage swales, pumping, detention and storm water treatment facilities within the SUBDIVISION. DEVELOPER shall install at his sole cost and expense, such sedimentation and erosion control measures as are required. DEVELOPER shall install at his sole cost and expense, such groundwater and foundation drainage system as may be required for development of the SUBDIVISION.

- (c) Any reimbursements to the DEVELOPER for oversizing of storm sewer lines and other storm water facilities, or the construction of off-site facilities will be as specified in this MOAPI.

8.2 Master Drainage Plan.

- (a) THE DEVELOPER, at his sole expense shall prepare a master drainage plan for the SUBDIVISION. The master drainage plan shall show the location and extent of all drainage system improvements, including but not limited to collection, detention and treatment facilities for on-site storm water and the pass-through of off-site historical storm water flows based on the 100 year storm flows. If the master drainage plan results in changes to drainage affecting other property or facility owners, the TOWN may require the DEVELOPER to obtain written consent from each property or facility owner for the changes before the TOWN will accept the plan.
- (b) Storm water discharges and runoff shall be designed to discharge into TOWN accepted drainage ways and facilities, and shall, to the maximum extent possible, avoid conveying storm water discharges in irrigation ditches. In the event that storm water discharges into an irrigation ditch, the DEVELOPER shall by separate agreement obtain the written consent of the owner(s) of the irrigation facility to accept said storm water. A copy of the agreement shall be provided to the TOWN before the TOWN will accept the master drainage plan.
- (c) The master drainage plan shall define the DEVELOPER's responsibility for on-site surface drainage improvements. The master drainage plan shall include construction of facilities to convey, collect and detain storm water and to remove pollutants from it.

(d) The master drainage plan shall define the DEVELOPER's responsibility for groundwater and foundation drainage improvements, if any. Groundwater and foundation drainage improvements shall not discharge into public storm water facilities or improvements without prior written acceptance by the TOWN. DEVELOPER shall be responsible for obtaining all state and federal permits that may be required for the discharge of this groundwater to the state waters. The DEVELOPER shall be responsible for ongoing maintenance of all improvements necessary to transport groundwater to a natural drainageway or storm sewer system approved by the TOWN.

(e) The master drainage plan shall define the DEVELOPER's responsibility for off-site improvements including the oversizing of facilities.

(f) The TOWN may require the DEVELOPER to update the master drainage plan for the SUBDIVISION for the review of each final plat of a phased project to determine the design, timing, and responsibility for the improvements.

8.3 Drainage Improvement Construction.

(a) DEVELOPER shall construct drainage improvements for the PROPERTY in accordance with the Town's Master Drainage Plan and plans and construction specifications accepted by the TOWN and as described in "Exhibit B."

(b) The DEVELOPER shall so design and construct all storm drainage facilities as to control all stormwater runoff greater than that historically generated from the SUBDIVISION. The DEVELOPER shall not alter historic flows in a way that would adversely affect upstream or downstream properties.

(c) The DEVELOPER shall construct all improvements in an appropriate sequence to meet the demands that development of the SUBDIVISION generates. The DEVELOPER shall meet all TOWN standards and specifications in effect at the time of construction.

8.4 Overlot Grading of the SUBDIVISION. DEVELOPER shall initiate no overlot grading until the TOWN issues written acceptance of utility plans. The DEVELOPER shall provide temporary erosion control during overlot grading until the drainage improvements are completed.

8.5 Drainage Improvement Completion Before Issuance of Building Permits.

Drainage improvements shall be completed and granted conditional acceptance by the TOWN before the issuance of building permits. Completion of the improvements shall include the certification by a licensed professional engineer that DEVELOPER has constructed the drainage facilities that serve the development in conformity with the plans reviewed by the TOWN. Any deviation from the accepted plans shall be the responsibility of the DEVELOPER to correct. Said certification shall be submitted to the TOWN at least two (2) weeks before the date of issuance for any subsequent building permit.

8.6 Modification of Accepted Drainage Improvements. Drainage improvements for each lot shall be constructed by the DEVELOPER in accordance with plans Approved by the TOWN. Said plans shall conform to the TOWN's then existing regulations. DEVELOPER shall furnish copies of accepted plans to subsequent purchasers of lots and record a disclosure with all lots sold that it shall be the responsibility of the fee title holder to maintain the stormwater drainage improvements as constructed. Any changes from the Approved plans with respect to grade elevation, storm drainage facility design, or landscaping that will change, modify, impede or otherwise block the flow of stormwater on or across any private property, that occur as a result of the construction of houses and/or other development of lots, whether by the DEVELOPER or other parties, shall require the acceptance of the TOWN. The TOWN may withhold the issuance of building permits and certificates of occupancy until the TOWN has reviewed and determined that such changes are acceptable for the safe and efficient delivery of storm drainage water.

8.7 Storm Water Capital Expansion Fees. The DEVELOPER shall pay any storm water capital expansion fees to the TOWN.

8.8 Areas of Special Flood Hazard. Construction within a FEMA designated "area of special flood hazard" is prohibited except as may be allowed in accordance with Article 8 of the Frederick Land Use Code. If any portion of the SUBDIVISION lies within an area of special flood hazard, including unmapped areas of special flood hazard, as defined by the Federal Emergency Management Agency (FEMA), the DEVELOPER is responsible for all the necessary design and the submittal of an application to FEMA for proposed changes to the designation to enable development of the SUBDIVISION within said areas. The TOWN must review and accept any submittal to FEMA before it is submitted to FEMA. FEMA shall approve any change in the area of special flood hazard designation before they will permit the DEVELOPER to undertake development activities within the area affected by the proposed change.

9. TRANSPORTATION FACILITIES

9.1 Traffic Impact Study. The DEVELOPER shall provide the TOWN a traffic impact study prepared by a transportation professional with adequate experience in transportation engineering and planning, in accordance with the criteria specified by the TOWN at the time of submittal of a final plat, unless the TOWN waives the requirement. The traffic impact study shall give special consideration to the use of traffic calming techniques and alternative modes of transportation in the design of the transportation facilities.

9.2 Off-site and On-site Rights-of-way, Easements, Licenses and Permits.

- (a) For full development of the SUBDIVISION to occur, the DEVELOPER may need to acquire certain off-site and on-site rights-of-way, easements, licenses and permits for the construction of off-site and on-site improvements, as identified in the accepted traffic study or future updates to the study. All acquisition costs of off-site and on-site rights-of-way, easements, licenses and permits necessary to serve the SUBDIVISION shall be the DEVELOPER's sole responsibility, subject to reimbursement as detailed in this MOAPI.
- (b) If the DEVELOPER cannot acquire an off-site or on-site easement or rights-of-way necessary to develop the SUBDIVISION, the DEVELOPER may request the TOWN's assistance in getting the easements or rights-of-way. Such assistance by the TOWN shall be in compliance with Colorado law authorizing the TOWN's use of eminent domain. The DEVELOPER shall advance to the TOWN all acquisition costs, including any court costs and attorneys' fees, the TOWN may incur in providing assistance.

9.3 On-site and Off-site Transportation Improvements. For full development of the SUBDIVISION to occur, certain on-site and off-site transportation improvements, as identified in the accepted traffic study, may be necessary. The DEVELOPER shall construct the improvements in a sequence acceptable to the TOWN to meet the demands that development of each phase of the SUBDIVISION will generate. The DEVELOPER shall follow all applicable provisions and standards of the Frederick Municipal Code. The DEVELOPER agrees to construct or contribute to the construction of all on-site and off-site transportation improvements to accommodate transportation needs that each phase of the SUBDIVISION development will generate.

9.4 On-site and Off-site Arterial Street Improvements and Arterial Intersection Improvements. The DEVELOPER's construction of on-site and off-site arterial street improvements and arterial intersection improvements in excess of the cost of a collector street and collector street intersection, excluding on-site rights-of-

way and site specific improvements, will be subject to reimbursement by the TOWN or adjacent benefitted property as specified in this MOAPI.

9.5 On-site Transportation Improvements. The DEVELOPER is solely responsible for construction of all transportation improvements to accommodate development of the SUBDIVISION that do not directly benefit other properties. The TOWN will not provide for reimbursement to the DEVELOPER for these expenses.

9.6 Street Improvements. For the purposes of this AGREEMENT, "street improvements" shall be defined to include, but not limited to, all improvements within the right-of-way such as bridges, sub-base preparation, road base, asphalt, concrete, seal coat, curb and gutter, medians, entryways, traffic calming features, underground utilities, sidewalks, bicycle and pedestrian paths, traffic signs, street lighting, street name signs, landscaping, irrigation systems and drainage improvements. Street improvements other than curbs, gutters, sidewalks and signs, shall not be installed until all utility lines to be placed within the right-of-way have been completely installed, including individual lot service lines leading in from the main to the property line. All street improvements shall be constructed and installed pursuant to TOWN accepted plans, specifications, and as detailed in "Exhibit B."

9.7 Street Signs, Traffic Signs and Striping. TOWN will install, at DEVELOPER's expense, striping, street name signs, stop signs, speed limit signs and other regulatory signs on all internal streets and on those off-site streets as determined appropriate by the TOWN. TOWN shall install signs and striping in accordance with the Model Traffic Code, as from time to time amended, and other applicable legal requirements.

9.8 Street Lights. The TOWN shall install at the DEVELOPER's sole costs and expense all required street lighting and underground electrical supply.

9.9 School Bus Shelters. DEVELOPER will install at his sole cost and expense appropriately designed pedestrian shelters at school bus stops within the development. The location of the shelters shall be decided in cooperation with the School District. School bus shelters shall be owned and maintained by the Homeowners Association.

9.10 Mail Boxes. The DEVELOPER shall coordinate with the U.S. Postal Service and bear the cost of installing cluster mailboxes for the subdivision.

10. PARKS AND OPENSOURCE

10.1 Park and Open Space Improvements.

- (a) **Park Master Plan.** Park and open space improvements for the development shall be designed by a professional park planner employed by the DEVELOPER, or by the TOWN at the DEVELOPER's sole cost, and constructed in accordance with the resulting master plan accepted by the TOWN (and the Carbon Valley Recreation District, if the park and/or open space is to be dedicated to the District) and as detailed in "Exhibit B." These improvements may include but not be limited to, the development of passive use open spaces and active use parks and open space and playgrounds.
- (b) DEVELOPER shall construct, develop and install at his sole cost and expense, all landscaping, irrigation systems, ballfields, courts, skate parks, playgrounds, picnic shelters, restrooms, nature observation stations, trails and walkways within the SUBDIVISION in accordance with the master park plan.
- (c) Any reimbursements to the DEVELOPER for the construction of facilities to be shared by other developments will be as specified in this MOAPI.

11. **FIRE PROTECTION FACILITIES.** The DEVELOPER shall be solely responsible for installing all fire hydrants and other fire protection facilities in the SUBDIVISION and on its perimeter as may be required by the Frederick-Firestone Fire Protection District.

12. **LANDSCAPING.**

12.1 **Public and Private Landscape Improvements.**

- (a) **Public Landscaping Improvements.** DEVELOPER shall employ a qualified landscape planner or architect to design landscape improvements for public lands and rights-of-way within the development. DEVELOPER shall construct landscape improvements as required in the landscape and irrigation plans reviewed and accepted by the TOWN and as detailed in "Exhibit B."
- (b) **Private Landscaping Improvements.** For private landscape improvements, excluding single family detached residential lots, DEVELOPER shall furnish a final landscape plan to the TOWN for review and acceptance before installation of landscape improvements.

13. **DEVELOPMENT REQUIREMENTS AND EXACTIONS NOT A TAKINGS.** The TOWN and the DEVELOPER agreed that in all instances the requirements and exactions contained in this agreement are directly related to and generated by the

development intended to occur within the SUBDIVISION and that no takings thereby will occur requiring any compensation.

14. MISCELLANEOUS TERMS

14.1 Breach of AGREEMENT, Default. In the event that the DEVELOPER should fail to timely comply with any of the terms, conditions, covenants and undertakings of this AGREEMENT, the TOWN in its sole discretion may declare the DEVELOPER in default and after giving thirty (30) days written notice may call the security provided in Section 1.10 and exercise all other remedies available to the TOWN. The TOWN may withhold any additional building permits, certificates of occupancy, or provision of new utilities, fixtures or services until the completion of the improvements. Any cost incurred by the TOWN including, but not limited to administrative costs and reasonable attorneys' fees, in pursuit of any remedies due to the breach by the DEVELOPER shall be paid by the DEVELOPER. The TOWN may deduct these costs from the Improvement Guarantee. Failure to timely complete construction of improvements that is solely due to inclement weather, acts of God, material shortages, labor strikes, and other matters not within the DEVELOPER'S control shall not be considered a breach of the AGREEMENT.

14.2 Reimbursement to TOWN. The TOWN may complete construction, repairs, replacements, or other work for DEVELOPER pursuant to Sections 1.6, 1.7, 1.8, or 14.1 of this AGREEMENT with funds other than the Improvement Guarantee, in which event DEVELOPER shall reimburse the TOWN within thirty (30) days after receipt of written demand and supporting documentation from the TOWN. If DEVELOPER fails to so reimburse TOWN, then DEVELOPER shall be in default of the AGREEMENT and the TOWN may exercise its rights under Section 14.1 of this AGREEMENT.

14.3 Access to Public Street Required for Building Permit. TOWN shall issue no building permits for any structure located more than five hundred feet from a single point of access.

14.4 Indemnification and Release of Liability.

- (a) **General Liability.** DEVELOPER agrees to indemnify and hold harmless the TOWN, its officers, employees, agents, and servants, and to pay any judgments rendered against said persons because of any suit, action, or claim caused by, arising from, or due to acts or omissions by the

DEVELOPER, its officers, employees, agents, consultants, contractors, and subcontractors, and to pay to the TOWN and said persons their reasonable expenses, including, but not limited to, reasonable attorneys' fees and reasonable expert witness fees, incurred in defending any such suit, action or claim; provided, however, that DEVELOPER's obligation herein shall not apply to the extent said suit, action or claim results from any acts or omissions of officers, employees, agents or servants of the TOWN or conformance with requirements imposed by the TOWN. Said obligation of DEVELOPER shall be limited to suits, actions or claims based upon conduct before "final acceptance" by the TOWN of the construction work. DEVELOPER acknowledges that the TOWN's review and approval of plans for development of the property is done in furtherance of the general public's health, safety and welfare and that no immunity is waived and that no specific relationship with, or duty of care to, the DEVELOPER or third party is assumed by such review or approval.

- (b) **Drainage Liability.** The DEVELOPER shall indemnify and hold harmless the TOWN for any liability the latter may have or account of any change in the nature, direction, quantity, or quality of historical drainage flow resulting from the development of this PROPERTY or from the construction of streets or storm sewers therein. In addition, the DEVELOPER promises to reimburse the TOWN for any costs including, but not limited to, reasonable attorneys' fees, which the TOWN incurs in acquiring or condemning any rights-of-way or easements that the DEVELOPER requires the TOWN to acquire or condemn, or which the TOWN is held to have acquired or condemned for drainage, because of the development of this PROPERTY.

14.5 Governmental Immunities Act. The TOWN is relying on, and does not waive or intend to waive by any provision of this AGREEMENT, the monetary limitations or any rights, immunities and protection provided by the Colorado Governmental Immunities Act (C.R.S. 24-10-101 et seq.) as from time to time amended, or otherwise available to the TOWN, its officers, agents, employees, attorneys, engineers, planners, indemnifiers and insurers.

14.6 Recording of AGREEMENT. This AGREEMENT shall be recorded with the Weld County Clerk and Recorder and shall be a covenant running with the land herein described in order to put prospective purchasers or other interested parties on notice as to the terms and provisions hereof. The DEVELOPER shall include on the final plat a "plat note" noting the existence of the AGREEMENT and its attached Exhibits by reference to its reception number as recorded by the Weld County Clerk and Recorder. All recording fees shall be paid by the DEVELOPER. The TOWN shall retain the recorded AGREEMENT.

14.7 Binding Effect of AGREEMENT. This AGREEMENT shall run with the land included within the SUBDIVISION and shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

14.8 Assignment, Delegation and Notice. DEVELOPER shall provide to the TOWN for approval, written notice of any proposed transfer of title to any portion of the Development and of the AGREEMENT obligations to any successor, as well as arrangements, if any, for delegation of the improvement obligations hereunder. DEVELOPER and successor shall, until written TOWN approval of the proposed transfer of title and delegation of obligations, be jointly and severally liable for the obligations of DEVELOPER under this AGREEMENT.

EXCEPTION: The DEVELOPER may sell individual developed lots, commercial lots or single units in a multi-family development without the TOWN's approval.

14.9 Modification and Waiver. No modification of the terms of this AGREEMENT shall be valid unless in writing and executed with the same formality as this AGREEMENT, and no waiver of the breach of the provisions of any section of this AGREEMENT shall be construed as a waiver of any subsequent breach of the same section or any other sections that are contained herein.

14.10 Addresses for Notice. Any notice or communication required or permitted hereunder shall be given in writing and shall be personally delivered, or sent by United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed as follows:

TOWN:

Town of Frederick
c/o Town Clerk
P.O. Box 435
Frederick, Colorado 80530

With copy to:

Samson, Pipis and Marsh, LLC
255 Weaver Park Road, Suite 200
P.O. Box 1079
Longmont, CO 80502

DEVELOPER:

Or to such other address or the attention of such other person(s) as hereafter designated in writing by the applicable parties in conformity with this procedure. Notices shall be effective upon mailing or personal delivery in compliance with this paragraph.

- 14.11. **Force Majeure.** Whenever an agreed upon deadline requires DEVELOPER to complete construction, maintenance, repair, or replacement of improvements, said deadline shall be extended for a reasonable time if the performance cannot be completed in a timely manner due to Acts of God, or other circumstances constituting force majeure, or circumstances beyond the reasonable control of DEVELOPER.
- 14.12. **Approvals or Acceptance.** Whenever approval or acceptance of a matter is required or requested of the TOWN pursuant to any provisions of this AGREEMENT, the TOWN shall act reasonably in responding to such matter.
- 14.13. **Previous Agreements.** All previous written and recorded agreements between the parties, their successors, and assigns, including, but not limited to, any Annexation Agreement, shall remain in full force and effect and shall control this Development. If any prior agreements conflict with this AGREEMENT, then this AGREEMENT controls.
- 14.14. **Title and Authority.** DEVELOPER warrants to the TOWN that it is the record owner for the property within the Development or is acting in accordance with the currently valid and unrevoked power of attorney of the record owner hereto attached. The undersigned further warrant to have full power and authority to enter this AGREEMENT.
- 14.15. **Severability.** This AGREEMENT is to be governed and construed according to the laws of the State of Colorado. In the event that upon request of DEVELOPER or any agent thereof, any provision of the AGREEMENT is held to violate municipal, state, or federal laws and thereby rendered unenforceable, the TOWN, in its sole discretion, may determine whether the remaining provisions will or will not remain in force.
- 14.16. **Original Counterparts.** This Agreement may be executed in counterparts, each of which will be an original, but all of which together shall constitute one and the same instrument.

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IN WITNESS WHEREOF, the parties have executed this agreement as of the date first set forth above.

TOWN OF FREDERICK

DEVELOPER

By _____
Eric E. Doering, Mayor

By _____

ATTEST:

By _____
Nanette S. Fornoff, Town Clerk

STATE OF COLORADO)

) SS:

COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20__ by _____ as Mayor and _____ as Town Clerk of the Town of Frederick.

My commission expires:

Witness my hand and official seal.

Notary Public

STATE OF COLORADO)

) SS:

COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20__ by _____ (signatory's name) as _____ (position/title).

My commission expires:

Witness my hand and official seal.

Notary Public

EXHIBIT A

MAP AND LEGAL DESCRIPTION

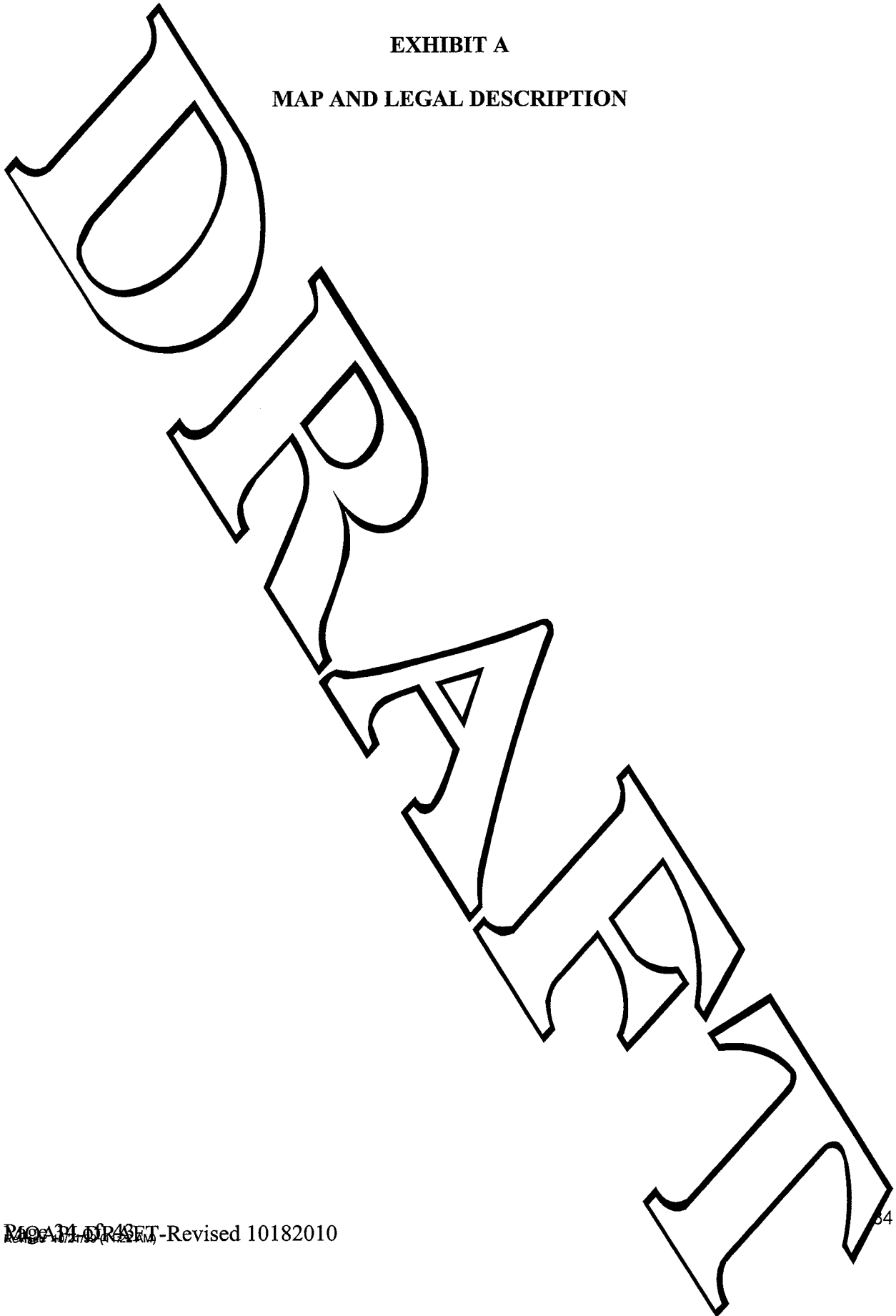


EXHIBIT B

PUBLIC IMPROVEMENTS TO BE CONSTRUCTED

Description of Improvement	Location of Improvement (address)	Quantity	Unit Price	Total
DRAFT				

MOA PI-DRAFT- Revised 10182010

35

EXHIBIT B

PUBLIC IMPROVEMENTS TO BE CONSTRUCTED

Description of Improvement	Location of Improvement (address)	Quantity	Unit Price	Total
DRAFT				

MOA PI-DRAFT- Revised 10182010

35

EXHIBIT B

PUBLIC IMPROVEMENTS TO BE CONSTRUCTED

Description of Improvement	Location of Improvement (address)	Quantity	Unit Price	Total
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MOA PI-DRAFT- Revised 10182010

MOA PI-DRAFT- Revised 10182010

35

EXHIBIT C

(Sample)
(BANK LETTERHEAD)

IRREVOCABLE LETTER OF CREDIT

Town of Frederick
P.O. Box 435
Frederick, CO 80530

No.
Date:
Expiration:

Gentlemen:

We hereby authorize you to draw on us for the account of (Insert the name and account number of the DEVELOPER) up to an aggregate amount of \$ (10% of estimated cost of improvements) available by your drafts at sight for one hundred percent (100%) face value accompanied by your signed statement that the above is drawn in payment of public improvements pursuant to:

(Insert the title of the Memorandum of Agreement for Public Improvements)

Drafts must be drawn and negotiated on or before eighteen (18) months from date. Each draft presented under this letter of credit must state that it is drawn under (Title of Bank and identification of the Letter of Credit) and the amount endorsed on this letter of credit.

We hereby agree the drawers, endorsers and bona fide holders of all drafts drawn under and in compliance with the terms of this credit that such drafts will be duly honored upon the presentation to the drawee.

Yours, very truly,

By: (signature of authorized bank officer)
Title: (title of signator)

Attest:

EXHIBIT D

MEMORANDUM OF UNDERSTANDING CONCERNING REIMBURSEMENT FOR OVERSIZING PUBLIC IMPROVEMENTS

THIS AGREEMENT is made and entered into this ____ day of _____, 2009, by and between the TOWN of Frederick, a Colorado municipal corporation, whose address is P.O. Box 435, Frederick, Colorado ("TOWN"), and [DEVELOPER], a Colorado [...], whose address [...] ("DEVELOPER").

WHEREAS, DEVELOPER owns certain real property situated within the TOWN known as [PROPERTY] ("Subdivision" or "Development"); and

WHEREAS, pursuant to the Memorandum of Agreement for Public Improvements ("MOAPI") dated _____ between the TOWN and DEVELOPER, DEVELOPER has been required to provide at his sole expense, certain public improvements in conjunction with the development of said property, and

WHEREAS, certain undeveloped realty which is in the TOWN or which may be annexed to the TOWN, and not owned by the DEVELOPER, is so situated that upon anticipated subsequent development, the subsequent developer will directly benefit from the aforesaid public improvements provided by the DEVELOPER; and

WHEREAS, the TOWN is willing to lend its good offices in endeavoring to assist the DEVELOPER in the recoupment of reasonable expenses attributable to the benefit of the public improvements obtained by such subsequent developer at the time of development.

NOW, THEREFORE, it is the understanding of the parties that they will do and perform as follows:

- 1. Reimbursement for Public Improvements.** The parties hereby agree that the DEVELOPER shall be entitled to recover a portion of his expenses under the MOAPI from subsequent development that uses capacity in facilities provided by the DEVELOPER. The recovery allowed shall be in direct proportion to the amount of capacity in the facilities used by the subsequent development. The DEVELOPER shall provide the TOWN with a signed statement of reimbursement charges from a qualified engineer, accompanied by supporting documentation, setting a dollar amount per measurable unit to be charged subsequent developers for their proportional share of the total capacity in the facilities. The reimbursement charge is subject to approval by the TOWN and is determined by the division of the total cost of the facility by the total number of measurable units of capacity (gallons, dwelling units, trips generated, acreage, square footage, etc.) in the facility. The engineer's statement of reimbursement charges

shall be attached to this agreement and incorporated therein. The DEVELOPER may recover for only that portion of the facilities that are used by a subsequent developer.

2. **Notice of Claim for Reimbursement by Subsequent Developer.** Upon written notification by DEVELOPER to the TOWN of a claim for reimbursement from a subsequent developer of property benefited by said public improvements, TOWN agrees to require reimbursement from the subsequent developer as a condition of final development approval, along with interest at the legal rate then provided. Notice of the claim for reimbursement must be received by the TOWN during the initiation of subsequent development, i.e. upon application for annexation or platting. The DEVELOPER's claim for reimbursement is forfeited if written notice is received by the TOWN after final action is taken on the subsequent development.
3. **Time Limit for Reimbursement Eligibility.** Reimbursement from subsequent developers shall be limited to those developments which receive annexation or final plat approval within twenty (20) years of the date of this Agreement.
4. **No Financial Commitment by TOWN.** Nothing in this Memorandum shall be construed as a commitment of financial liability to the DEVELOPER to otherwise require collection or payment of the amount claimed for reimbursement through participation of a subsequent developer, the TOWN is merely engaging to extend its good offices to facilitate an equitable resolution in achieving fair participation in public improvement costs.
5. **Attorney Fees.** In the event that any party finds it necessary to retain an attorney in connection with a default by another as to any of the provisions contained in this agreement, the defaulting party shall pay the other's reasonable attorney's fees and costs incurred in enforcing the provisions of this Agreement.
6. **Binding Effect.** This agreement shall bind and extend to the heirs, representatives, successors and assigns of the parties.
7. **Whole Agreement.** This instrument embodies the whole agreement of the parties. There are no promises, terms, conditions, or obligations other than those contained herein; and this Agreement shall supersede all previous communications, representations, or agreements, either verbal or written, between the parties hereto. Except as provided herein there shall be no modifications of this Agreement except in writing, executed with the same formalities as this instrument. Subject to the conditions precedent herein this Agreement may be enforced in any court of competent jurisdiction.

TOWN OF FREDERICK	DEVELOPER
By: , Mayor	By: Title:
ATTEST:	
By: , Town Clerk	

STATE OF COLORADO)
)ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 20__ by
as Mayor and _____ as Town Clerk of the Town of Frederick.

My commission expires:

Witness my hand and official seal.

Notary Public

STATE OF COLORADO)
)ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 20__ by
as _____.

My commission expires:

Witness my hand and official seal.

Notary Public

EXHIBIT E

MEMORANDUM OF UNDERSTANDING CONCERNING REIMBURSEMENT FOR OVERSIZING PUBLIC IMPROVEMENTS BY OTHERS

THIS AGREEMENT is made and entered into this ____ day of _____, 20____, by and between (enter name of developer of the public improvements), a Colorado (enter the type of corporation), whose address is (enter the full address of developer of the public improvements) ("Party of the First Part"), and (enter name of subsequent developer), a Colorado (enter the type of corporation), whose address is (enter the full address of subsequent developer) ("Party of the Second Part").

WHEREAS, Party of the Second Part owns certain real property situated within the TOWN known as (enter the name of the subdivision or PUD) ("Subdivision" or "Development"); and

WHEREAS, pursuant to the Memorandum of Agreement for Public Improvements ("MOAPI") dated (enter the date the MOAPI) between the Town of Frederick and Party of the First Part, the Party of the First Part has been required to provide at his sole expense, certain public improvements in conjunction with the development of his property, and

WHEREAS, the Party of the Second Part owns certain undeveloped realty which is so situated that upon development it will directly benefit from the aforesaid public improvements provided by the Party of the First Part; and

WHEREAS, the Town of Frederick has made it a condition of development approval that the Party of the Second Part reimburse the Party of the First Part for a portion of those reasonable expenses incurred by the Party of the First Part in the construction, installation and development of certain public improvements benefitting the development of property owned by the Party of the First Part; and

WHEREAS, the reimbursement is to be in direct proportion to the amount of capacity in the public improvements utilized by the development of the Party of the Second Part, including interest at the legal rate from the date of final acceptance of the public facilities;

NOW, THEREFORE, it is the understanding of the parties that they will do and perform as follows:

8. **Reimbursement for Proportional Share of Public Improvements.** The parties hereby agree that the Party of the Second Part shall reimburse to the Party of the First Part for its proportional share of the public facilities constructed, installed and developed by the Party of the First Part. The reimbursement charge is determined by the division of the total cost of the facility by the total number of measurable units of capacity (gallons, dwelling units, trips generated, acreage, square footage, etc.) in the facility. The Party of the First Part may recover from the Party of the Second Part for only that portion of the facility that is used by the Party of the Second Part. The reimbursement charges are as follows:

a. Water System Improvements.

- i. (Insert the specific location and size of line, pumping facility, or storage facility that was built and the Party of the Second Part's proportionate share to be

reimbursed. Reimbursement is to be a dollar amount per measurable unit (gallon or dwelling unit). Add more line items as necessary.)

b. Sewer System Improvements.

- i. *(Insert the specific location and size of line, pumping facility, or treatment facility that was built and the Party of the Second Part's proportionate share to be reimbursed. Reimbursement is to be a dollar amount per measurable unit (gallon or dwelling unit). more line items as necessary.)*

c. Drainage System Improvements.

- i. *(Insert the specific location and size of line, drainage swales, pumping, detention and storm water treatment facilities that was built and the Party of the Second Part's proportionate share to be reimbursed. Reimbursement is to be a dollar amount per measurable unit (acreage or dwelling unit). Add more line items as necessary.)*

d. Transportation System Improvements.

- i. *(Insert the specific location and size of the street, off-site rights-of-way, easements, licenses and permits or other transportation facility that was built and the Party of the Second Part's proportionate share to be reimbursed. Reimbursement is to be a dollar amount per measurable unit (trip generation or dwelling unit). Add more line items as necessary.)*

e. Park and Open Space Improvements.

- i. *(Insert the specific location and size of park or open space facility that was built and the Party of the Second Part's proportionate share to be reimbursed. Reimbursement is to be a dollar amount per measurable unit (acreage or dwelling unit). Add more line items as necessary.)*

9. **Payment Schedule.** *(Payment schedule and methods of payment are to be subject to negotiation and agreement between the parties. Insert the payment schedule and methods of payment here)*

10. **Attorney Fees.** In the event that any party finds it necessary to retain an attorney in connection with a default by another as to any of the provisions contained in this agreement, the defaulting party shall pay the other's reasonable attorney's fees and costs incurred in enforcing the provisions of this Agreement.

11. **Binding Effect.** This agreement shall bind and extend to the heirs, representatives, successors and assigns of the parties.

- 12. Whole Agreement.** This instrument embodies the whole agreement of the parties. There are no promises, terms, conditions, or obligations other than those contained herein; and this Agreement shall supersede all previous communications, representations, or agreements, either verbal or written, between the parties hereto. Except as provided herein there shall be no modifications of this Agreement except in writing, executed with the same formalities as this instrument. Subject to the conditions precedent herein this Agreement may be enforced in any court of competent jurisdiction.

Signed this _____ day of _____, 20

PARTY OF FIRST PART	PARTY OF SECOND PART
By: Title:	By: Title:

STATE OF COLORADO)

)ss.

COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 20
by _____ as Mayor and _____ as Town Clerk of the Town of Frederick.

My commission expires:

Witness my hand and official seal.

Notary Public

STATE OF COLORADO)

)ss.

COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 20
by _____ as _____.

My commission expires:

Witness my hand and official seal.

Notary Public

EXHIBIT F

SPECIAL PROVISIONS APPLYING TO MEMORANDUM OF AGREEMENT FOR PUBLIC IMPROVEMENTS

This Exhibit F is attached to and incorporated into that certain Memorandum of Agreement for Public Improvements for the [...] by and between the Town of Frederick, a Colorado municipal corporation and [...], a Colorado corporation (the "DEVELOPER"). In the event of any conflict between any paragraph, sentence or clause of this Exhibit F and similar provisions elsewhere in the MOAPI, the paragraph, sentence or clause of this Exhibit F shall control. [...]